

**Mayflower Contract Services, Inc. and Miscellaneous Warehousemen, Drivers and Helpers Local 986, International Brotherhood of Teamsters, AFL-CIO. Case 21-CA-28363**

March 25, 1992

### DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

On December 17, 1991, the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish certain relevant and necessary information following the Union's certification in Case 21-RC-18841. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) On January 14, 1992, the Respondent filed an amended answer admitting in part and denying in part the allegations in the complaint, and asserting certain affirmative defenses.

Thereafter, on February 14, 1992, the General Counsel filed a Motion for Summary Judgment with the Board. On February 19, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On March 4, 1992, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

#### Ruling on Motion for Summary Judgment

In its amended answer and response to the Notice to Show Cause, the Respondent admits its refusal to bargain and to furnish information, but denies that the information is necessary and relevant, and/or attacks the validity of the Union's certification both on the ground that the Respondent is exempt from Board jurisdiction under the doctrine of *Res Care*, 280 NLRB 670 (1986), and on the basis of the Board's unit determination in the representation proceeding.

All representation issues, including the jurisdictional issue, raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Re-

spondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).<sup>1</sup>

We also find that the Respondent has not, by its denial, raised any issue requiring a hearing with respect to the Union's request for information. The Union requested the following information from the Respondent:

- List of all employees with home addresses.
- Seniority dates of all employees.
- Rate of pay of all employees.
- List of all classifications, including the minimum and maximum rate range.
- Minimum and maximum wages per hour and the rate range of each employee and also, the method of progression.
- A copy of the insurance plan (including the amount the Company pays and the amount the employee pays).
- The number of paid holidays in effect at your plant.
- Pension Plan or Severance Plan, if any.
- Requirements and amount of vacation.
- Incentive Plan, if any.
- Night shift premium.
- Any other benefit or privilege that your employees now receive.

It is well established that wage and employment information of this type is presumptively relevant for purposes of collective bargaining and must be furnished on request.<sup>2</sup>

Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

The Respondent, a Kansas corporation, is engaged in the business of transportation with a facility located at 1415 East Third Street, Pomona, California. Annually, in the course and conduct of its business activities, the Respondent purchases and receives goods and products valued in excess of \$50,000 directly from suppliers located outside the State of California, and receives gross revenue in excess of \$250,000. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that

<sup>1</sup> Member Raudabaugh did not participate in the underlying representation proceeding.

<sup>2</sup> See, e.g., *Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977).

the Union is a labor organization within the meaning of Section 2(5) of the Act.<sup>3</sup>

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. The Certification

Following the election held June 21, 1991, the Union was certified on July 25, 1991, as the collective-bargaining representative of the employees in the following appropriate unit:

All bus drivers and mechanics employed by Respondent at its facility located at 1415 East Third Street, Pomona, California; excluding all other employees, office clerical employees, professional employees, guards, watchmen and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

### B. Refusals to Bargain

Since August 14, 1991, the Union has requested the Respondent to bargain and to furnish information, and, since October 14, 1991, the Respondent has refused. We find that these refusals constitute unlawful refusals to bargain in violation of Section 8(a)(5) and (1) of the Act.

## CONCLUSIONS OF LAW

By refusing on and after October 14, 1991, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the ini-

tial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

## ORDER

The National Labor Relations Board orders that the Respondent, Mayflower Contract Services, Inc., Pomona, California, its officers, agents, successors, and assigns, shall

### 1. Cease and desist from

(a) Refusing to bargain with Miscellaneous Warehousemen, Drivers and Helpers Local 986, International Brotherhood of Teamsters, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All bus drivers and mechanics employed by Respondent at its facility located at 1415 East Third Street, Pomona, California; excluding all other employees, office clerical employees, professional employees, guards, watchmen and supervisors as defined in the Act.

(b) On request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees.

(c) Post at its facility in Pomona, California, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive

<sup>3</sup> Although the Respondent denies the complaint's allegation that the Union is a labor organization, we do not find this denial raises an issue warranting hearing. As noted by the General Counsel, the Board has previously found the Union to be a labor organization. See *Miscellaneous Warehousemen Local 986*, 145 NLRB 1511, 1514 (1964). In any event, having failed to raise this issue in the underlying representation proceeding, the Respondent is now precluded from raising it in this proceeding. See *Wickes Furniture*, 261 NLRB 1061, 1062 fn. 4 (1982).

<sup>4</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Miscellaneous Warehousemen, Drivers and Helpers Local 986, International Brotherhood of Teamsters, AFL-CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is

relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All bus drivers and mechanics employed by Respondent at its facility located at 1415 East Third Street, Pomona, California; excluding all other employees, office clerical employees, professional employees, guards, watchmen and supervisors as defined in the Act.

WE WILL, on request, provide the Union with information that is necessary and relevant to its role as the exclusive bargaining representative of the unit employees.

MAYFLOWER CONTRACT SERVICES,  
INC.